

Memorandum of Understanding
between
Badger Wind, LLC
and
North Dakota Department of Agriculture

1. This Memorandum of Understanding (“MOU”), dated February th29, 2024, is between Badger Wind, LLC (**Badger Wind**), a Delaware limited liability company authorized to do business in North Dakota, and the North Dakota Department of Agriculture (**NDDA**). NDDA and Badger Wind are jointly referred to as the “**Parties**”.
2. Since 2021, Badger Wind has been proactively considering voluntary potential environmental mitigation offsets related to the Badger Wind Project (**Project**) in coordination with the North Dakota Game and Fish (**NDGFD**) and the U.S. Fish and Wildlife Service (**USFWS**).
3. The Project is an up to 252-megawatt wind energy conversion facility located in Logan & McIntosh Counties, North Dakota. Badger Wind plans to own, construct, and operate the Project.
4. Badger Wind has sited the proposed turbine locations of the Project off of unbroken (i.e., native) grasslands, consistent with the recommendations of the NDGFD.
5. By implementing proper siting practices, Badger Wind represents that the Project will have minimal adverse environmental impacts in accordance with North Dakota Century Code section 49-22-02. However, to address the possibility of indirect adverse impacts that may result from the construction or operation of the Project, (e.g. potential displacement of grassland breeding birds and/or waterfowl), Badger Wind has proposed in good faith to provide voluntary mitigation offsets.
6. Badger Wind has elected to make a voluntary contribution to the Environmental Impact Mitigation Fund (**Fund**) administered by NDDA under North Dakota Century Code section 4.1-01-21.1 so that NDDA can develop and implement mitigation offsets on behalf of Badger Wind in relation to the Project.
7. Accordingly, Badger Wind will voluntarily:

Contribute **one million twenty-one thousand and thirty-three dollars (\$1,021,033)** to the Fund pursuant to North Dakota Century Code section 49-22-09.2.

This contribution shall be used by the Agriculture Commissioner for the purposes provided in North Dakota Century Code section 4.1-01-21.1 and for the purpose of the protection and/or restoration of grasslands, wetlands, and other habitats as deemed appropriate. This dollar amount (**\$1,021,033**) is voluntarily contributed by Badger Wind as an environmental mitigation offset for potential displacement within 378.6 acres of grassland habitat and 74.9 acres of wetland habitat, as determined in coordination with NDGFD and NDDA.
8. NDDA recognizes Badger Wind's efforts to avoid and minimize adverse environmental impacts through strategic and ecologically responsible Project and turbine siting as well as through its voluntary mitigation offsets for residual potential indirect environmental impacts.

9. This MOU, and all voluntary commitments made, are contingent upon two milestones:

Milestone 1: Badger Wind filing a Notice of Intent to Start Construction of the Project with the North Dakota Public Service Commission (PSC), and

Milestone 2: The Project becoming commercially operational.

10. Within thirty (30) days of the Milestone 1, the Parties will determine the financial mechanism for Badger Wind to transfer the voluntary offset dollars into the Fund and consequently Badger Wind will transfer to the Fund a minimum of 50% of the total voluntary contribution as stated in paragraph 7 (**five hundred ten thousand five hundred sixteen dollars and fifty cents (\$510,516.50)**).

11. At Milestone 2, Badger Wind will make the final financial voluntary contribution to the Fund, comprising the remainder of its voluntary contribution as stated in paragraph 7. Badger Wind, in its discretion, may make other payments of its voluntary contribution at other times between Milestone 1 and Milestone 2.

12. Between Milestone 1 and Milestone 2, NDDA will timely engage with a mitigation provider(s) to develop mitigation offset plans as to where and what offset mitigation actions will take place. Prior to Milestone 1, NDDA may, as appropriate, proactively engage in preliminary exploratory discussions with a mitigation provider(s).

13. NDDA will notify Badger Wind of the use of the funds that were contributed by Badger Wind under this MOU. The Agriculture Commissioner will use the contributed funds for the purposes provided in North Dakota Century Code section 4.1-01-21.1. In general, the Agriculture Commissioner will use the contributed funds to:

- Establish, restore, enhance, and/or preserve grassland habitat;
- Enter into non-perpetual, *e.g.*, 30-year, easements/agreements for appropriate acreages on working lands, that are limited in time to the operational life of the Project;
- Purchase proper seed mixes (such as diverse, native perennial grass/forb mix suited for site), and conduct proper restoration/protection measures, management, and maintenance of mitigation offset areas; and
- As practicable, conduct mitigation offsets within the general vicinity of the area (but, when indicated, not within 0.5 miles of direct impact), county, or region affected by the Project or within another suitable area of similar habitat within the State as approved by NDDA. No mitigation offsets may take place outside the State.

14. The Parties recognize that time is of the essence to implement the terms of this MOU. All mitigation offsets are expected to be delivered by NDDA within 5 years after Milestone 2, following the payment schedule described in paragraphs 10 and 11. Mitigation offset efforts will be prioritized to take place on private land acreage with willing landowners who, as appropriate, will be compensated financially for the initial habitat establishment and for subsequent transition into appropriate conservation use within their respective operations.

15. Badger Wind may reasonably modify financial mitigation offset estimates if unforeseen circumstances during construction result in significant Project changes (e.g., reduction or increase in turbine number or change in turbine locations). The Parties will coordinate together as to any substantial estimate modifications.

16. NDDA will notify the PSC of mitigation efforts made by or on behalf of Badger Wind under this MOU.

17. It fully is the intent of the Parties to work together in good faith to implement the terms of this MOU so that voluntary environmental mitigation offsets pertinent to this MOU can be established and maintained in a timely, efficient, transparent, cost-effective, and equitable manner. This MOU is effective on the date that it has been signed by both Parties.

MOU acknowledged and entered into on this 29th day of February 2024,

Badger Wind, LLC

Mark D. Crowl

Mark D. Crowl
Director, Development

MOU acknowledged and entered into on this 29th day of February 2024

North Dakota Department of Agriculture

Doug Goehring

Doug Goehring
Agriculture Commissioner